

HOUSE BILL 1050

A1

2lr3114
CF 2lr2836

By: **Delegates Barkley and Davis**

Introduced and read first time: February 10, 2012

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages Licensees – Adult Entertainment – Exception**

3 FOR the purpose of providing that certain prohibitions in certain jurisdictions against
4 alcoholic beverages licensees allowing certain types of adult entertainment do
5 not apply to licensees who are operators of theaters, art centers, or similar
6 establishments that present performances expressing matters of serious
7 literary, artistic, scientific, or political value; altering a prohibition relating to
8 certain adult entertainment activity to remove certain references to touching;
9 altering certain cross-references to clarify that certain references to certain
10 adult entertainment activity; terminating an exemption for certain license
11 holders from a prohibition against certain adult entertainment activity in
12 Prince George’s County; and generally relating to alcoholic beverages licensees
13 and adult entertainment.

14 BY repealing and reenacting, with amendments,
15 Article 2B – Alcoholic Beverages
16 Section 10–405, 11–304(e)(3)(i), 12–203, 12–204(d), 20–103.1(a)(2),
17 20–105.1(a)(3), 20–107(b)(2), 20–107.1(a)(2), 20–108.1(a)(3),
18 20–108.2(a)(2), 20–110(a)(2), 20–111(a)(2), 20–112(a)(2), and 20–113(a)(2)
19 Annotated Code of Maryland
20 (2011 Replacement Volume)

21 BY repealing and reenacting, without amendments,
22 Article 2B – Alcoholic Beverages
23 Section 12–204(a)
24 Annotated Code of Maryland
25 (2011 Replacement Volume)

26 BY repealing
27 Chapter 262 of the Acts of the General Assembly of 2005
28 Section 2

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Chapter 262 of the Acts of the General Assembly of 2005
3 Section 3

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article 2B – Alcoholic Beverages**

7 10–405.

8 (a) The provisions of this section apply only in:

- 9 (1) Allegany County;
- 10 (2) Anne Arundel County;
- 11 (3) Calvert County;
- 12 (4) Caroline County;
- 13 (5) Carroll County;
- 14 (6) Cecil County;
- 15 (7) Charles County;
- 16 (8) Dorchester County;
- 17 (9) Frederick County;
- 18 (10) Garrett County;
- 19 (11) Harford County;
- 20 (12) Kent County;
- 21 (13) Prince George’s County;
- 22 (14) Queen Anne’s County;
- 23 (15) St. Mary’s County;
- 24 (16) Except as provided in subsection (i) of this section, Washington
25 County;

1 (17) Wicomico County; and

2 (18) Worcester County.

3 (b) (1) [Any] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
4 **SUBSECTION, A** license issued under the provisions of this article shall be revoked if,
5 after hearing as provided in § 10–403 of this subtitle, any of the activities listed in this
6 section are found to occur on any premises or location for which the license was issued.

7 (2) **THE LICENSE OF A PERSON MAY NOT BE REVOKED UNDER**
8 **PARAGRAPH (1) OF THIS SUBSECTION IF:**

9 (i) **THE PERSON OPERATES A THEATER, CONCERT HALL,**
10 **ART CENTER, MUSEUM, OR SIMILAR ESTABLISHMENT THAT IS PRIMARILY**
11 **DEVOTED TO THE ARTS OR THEATRICAL PERFORMANCES; AND**

12 (ii) **THE PERFORMANCES EXPRESS MATTERS OF SERIOUS**
13 **LITERARY, ARTISTIC, SCIENTIFIC, OR POLITICAL VALUE.**

14 (c) With respect to attire and conduct, a person may not:

15 (1) Be employed or used in the sale or service of alcoholic beverages in
16 or upon the licensed premises while the person is unclothed or in attire, costume or
17 clothing so as to expose to view any portion of the female breast below the top of the
18 areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals;

19 (2) Be employed or act as a hostess or act in a similar–type capacity to
20 mingle with the patrons while the hostess or person acting in a similar–type capacity
21 is unclothed or in attire, costume or clothing as described in paragraph (1) of this
22 subsection;

23 (3) Encourage or permit any person on the licensed premises to touch,
24 caress or fondle the breasts, buttocks, anus or genitals of any other person; or

25 (4) Permit any employee or person to wear or use any device or
26 covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any
27 portion of it.

28 (d) With respect to entertainment provided, a person may not:

29 (1) Permit any person to perform acts of or acts which simulate:

30 (i) The act of sexual intercourse, masturbation, sodomy,
31 bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

1 (ii) The [touching,] caressing or fondling of the breast, buttocks,
2 anus or genitals; or

3 (iii) The display of the pubic hair, anus, vulva or genitals;

4 (2) Permit any entertainer whose breasts or buttocks are exposed
5 (subject to the restrictions of paragraph (1) of this subsection) to perform closer than
6 six feet from the nearest patron; or

7 (3) Permit any person to use artificial devices or inanimate objects to
8 depict, perform or simulate any activity prohibited by paragraph (1) of this subsection.

9 (e) A person may not exhibit or show any motion picture film, still picture,
10 electronic reproduction or other visual reproduction depicting:

11 (1) Acts or simulated acts of sexual intercourse, masturbation,
12 sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited
13 by law;

14 (2) Any person being [touched,] caressed or fondled on the breast,
15 buttocks, anus or genitals;

16 (3) Scenes where a person displays the vulva or anus or the genitals;
17 or

18 (4) Scenes where artificial devices or inanimate objects are employed
19 to depict, or drawings are employed to portray, any of the prohibited activities
20 described above.

21 (f) A person may not permit any person to remain in or upon the licensed
22 premises who exposes to public view any portion of his genitals or anus.

23 (g) The provisions of this section do not permit any conduct or form of attire
24 prohibited by any other provision of statute, ordinance, rule or regulation.

25 (h) In Cecil County, in addition to the penalty provided in subsection (b) of
26 this section, if any of the activities listed in subsections (c), (d), (e), and (f) of this
27 section are found to occur on the premises for which the license was issued, the holder
28 of the license, or any employee, entertainer, or patron who performs any of the listed
29 activities is guilty of a misdemeanor and shall be fined or imprisoned according to the
30 penalty set forth in § 16–503 of this article.

31 (i) In Washington County, this section does not apply to:

32 (1) The Washington County Playhouse; or

1 (2) A theater holding a Class B beer, wine and liquor on-sale license
2 under § 6-201(w) of this article.

3 (j) (1) This subsection applies only in Caroline County.

4 (2) After a finding that the activities enumerated in this section have
5 occurred, the Board of License Commissioners may decide whether or not to revoke a
6 license, notwithstanding the mandatory provisions of subsection (b) of this section.

7 11-304.

8 (e) (3) (i) Alcoholic beverages may not be brought onto any premises
9 and consumed or transferred if the premises constitute a place of public entertainment
10 and the entertainment is of the type [listed under § 10-405(c) through (f)]
11 **PROHIBITED UNDER § 10-405** of this article.

12 12-203.

13 (a) In this section, “adult entertainment” means:

14 (1) With respect to attire and conduct:

15 (i) Employment or use of any person in the sale or service of
16 alcoholic beverages in or upon the licensed premises while the person is unclothed or
17 in attire, costume, or clothing so as to expose to view any portion of the female breast
18 below the top of the areola or of any portion of the pubic hair, anus, cleft of the
19 buttocks, vulva, or genitals.

20 (ii) Employment or use of the services of any hostess or other
21 person to mingle with the patrons while the hostess or other person is unclothed or in
22 attire, costume, or clothing as described in subparagraph (i) of this paragraph.

23 (iii) Encouragement of or permitting any person on the licensed
24 premises to [touch, caress,] **CARESS** or fondle the breasts, buttocks, anus, or genitals
25 of any other person.

26 (iv) Permitting any employee or person to wear or use any device
27 or covering exposed to view, which simulates the breast, genitals, anus, pubic hair, or
28 any portion of it.

29 (2) With respect to entertainment provided:

30 (i) Permitting any person to perform acts of or acts which
31 simulate:

32 1. Sexual intercourse, masturbation, sodomy, bestiality,
33 oral copulation, flagellation, or any sexual acts which are prohibited by law.

1 2. The [touching, caressing,] **CARESSING** or fondling of
2 the breast, buttocks, anus, or genitals.

3 3. The displaying of the pubic hair, anus, vulva, or
4 genitals.

5 (ii) Permitting any entertainer whose breasts and/or buttocks
6 are exposed (subject to the restrictions of subparagraph (i) of this paragraph) to
7 perform closer than 6 feet from the nearest patron.

8 (iii) Permitting any person to use artificial devices or inanimate
9 objects to depict, perform, or simulate any activity prohibited by subparagraph (i) of
10 this paragraph.

11 (3) Exhibiting or showing any motion picture film, still picture,
12 electronic reproduction, or other visual reproduction depicting:

13 (i) Acts or simulated acts of sexual intercourse, masturbation,
14 sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are
15 prohibited by law.

16 (ii) Any person being [touched, caressed,] **CARESSED** or fondled
17 on the breast, buttocks, anus, or genitals.

18 (iii) Scenes where a person displays the vulva, or anus, or the
19 genitals.

20 (iv) Scenes where artificial devices or inanimate objects are
21 employed to depict, or drawings are employed to portray, any of the prohibited
22 activities described above.

23 (b) In Baltimore City, the Board of License Commissioners may not
24 authorize nor may the holder of any class of alcoholic beverages license permit adult
25 entertainment on the licensed premises or on adjacent property over which the
26 licensee has ownership or control.

27 (c) Upon a finding by the Board of License Commissioners that a violation of
28 this section has occurred, the Board shall impose a suspension or revocation of the
29 license, fine, or both.

30 (d) This section does not apply to [any]:

31 **(1) ANY** licensee that offers adult entertainment as of May 31, 1993 or
32 the transferee of the license for the same premises if the transferee continues to offer
33 adult entertainment; **AND**

1 **(2) A LICENSEE WHO OPERATES A THEATER, A CONCERT HALL,**
2 **AN ART CENTER, A MUSEUM, OR A SIMILAR ESTABLISHMENT THAT IS PRIMARILY**
3 **DEVOTED TO THE ARTS OR THEATRICAL PERFORMANCES, WHEN THE**
4 **PERFORMANCES PRESENTED EXPRESS MATTERS OF SERIOUS LITERARY,**
5 **ARTISTIC, SCIENTIFIC, OR POLITICAL VALUE.**

6 12-204.

7 (a) This section applies only in Baltimore County.

8 (d) (1) (i) In this subsection, “adult entertainment” means
9 performances at licensed premises that are commonly called “go-go dancing”, “male
10 revues”, “female revues”, and “exotic dancing”.

11 (ii) “Adult entertainment” includes performances by individuals
12 who perform in any manner while in a state of dress in which clothing covers no more
13 than the genitals, pubic region, and areola of the female breast, as well as portions of
14 the body covered by supporting straps and devices.

15 (2) The holder of any class of alcoholic beverages license may not
16 permit adult entertainment on licensed premises or on property adjacent to the
17 licensed premises over which the holder has ownership or control.

18 (3) If the Board finds that a violation of this subsection has occurred,
19 the Board shall suspend or revoke the license for the premises where the violation
20 occurred, impose a fine on the holder of the license for the premises where the
21 violation occurred, or both.

22 (4) The provisions of this subsection do not apply to:

23 (i) The holder of an alcoholic beverages license that offered
24 adult entertainment on licensed premises for at least 5 calendar days between March
25 8, 1996 and April 8, 1996; [or]

26 (ii) A transferee of an alcoholic beverages license from a holder
27 described in item (i) of this paragraph as long as the transferee continues to offer adult
28 entertainment on the same licensed premises; OR

29 **(III) THE HOLDER OF AN ALCOHOLIC BEVERAGES LICENSE**
30 **WHO OPERATES A THEATER, A CONCERT HALL, AN ART CENTER, A MUSEUM, OR**
31 **A SIMILAR ESTABLISHMENT THAT IS PRIMARILY DEVOTED TO THE ARTS OR**
32 **THEATRICAL PERFORMANCES, WHEN THE PERFORMANCES EXPRESS MATTERS**
33 **OF SERIOUS LITERARY, ARTISTIC, SCIENTIFIC, OR POLITICAL VALUE.**

34 20-103.1.

1 (a) (2) “Place of public entertainment” means a business establishment
2 that does not hold a license under this article and that allows on its premises any form
3 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
4 **§ 10–405** of this article.

5 20–105.1.

6 (a) (3) “Place of public entertainment” means a business establishment
7 that does not hold a license under this article and that allows on its premises any form
8 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
9 **§ 10–405** of this article.

10 20–107.

11 (b) (2) “Place of public entertainment” means a business establishment
12 that:

13 (i) Does not have a license to sell alcoholic beverages but to
14 which patrons bring alcoholic beverages the patrons have purchased elsewhere; and

15 (ii) Allows on its premises any activity [listed in § 10–405(c)
16 through (f)] **PROHIBITED UNDER § 10–405** of this article.

17 20–107.1.

18 (a) (2) “Place of public entertainment” means a business establishment
19 that does not hold a license under this article and that allows on its premises any form
20 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
21 **§ 10–405** of this article.

22 20–108.1.

23 (a) (3) “Place of public entertainment” means a business establishment
24 that does not hold a license under this article and that allows on its premises any form
25 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
26 **§ 10–405** of this article.

27 20–108.2.

28 (a) (2) “Place of public entertainment” means a business establishment
29 that does not hold a license under this article and that allows on its premises any form
30 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
31 **§ 10–405** of this article.

32 20–110.

1 (a) (2) “Place of public entertainment” means a business establishment
2 that does not hold a license under this article and that allows on its premises any form
3 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
4 **§ 10–405** of this article.

5 20–111.

6 (a) (2) “Place of public entertainment” means a business establishment
7 that does not hold a license under this article and that allows on its premises any form
8 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
9 **§ 10–405** of this article.

10 20–112.

11 (a) (2) “Place of public entertainment” means a business establishment
12 that does not hold a license under this article and that allows on its premises any form
13 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
14 **§ 10–405** of this article.

15 20–113.

16 (a) (2) “Place of public entertainment” means a business establishment
17 that does not hold a license under this article and that allows on its premises any form
18 of attire or sexual display [listed under § 10–405(c) through (f)] **PROHIBITED UNDER**
19 **§ 10–405** of this article.

20 Chapter 262 of the Acts of 2005

21 [SECTION 2. AND BE IT FURTHER ENACTED, That the Prince George’s
22 County Board of License Commissioners of Prince George’s County shall exempt from
23 this Act a current alcoholic beverages license holder that currently conducts an
24 activity that is made unlawful by this Act only if the license holder:

25 (a) received approval from the Board to conduct the activity on or before
26 August 15, 1981; and

27 (b) has owned the licensed premises continuously since September 1, 1981.]

28 SECTION [3.] 2. AND BE IT FURTHER ENACTED, That this Act shall take
29 effect October 1, 2005.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 June 1, 2012.